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February 21, 2013

Capt. Brad Rea, P.E.  
District Utility Consultant, Eastern Arizona District Office  
5448. S. White Mountain Blvd., Suite 220  
Lakeside, AZ 85929

Re: Hopi Arsenic Mitigation Project (HAMP)

Dear Captain Rea:

This letter provides you with an overview of the Hopi Tribal Council's considerations on moving forward with HAMP and responds to your letters of February 8, 2013, and October 9, 2012. The Tribal Council appreciates the presentation you, Capt. Lorenz, and Lt. VanVleet made to the Council on October 9, 2012. We also appreciate the excellent work the Public Health Service/Indian Health Service engineering team in Lakeside has put into HAMP. Without your assistance and dedication, HAMP would not come to fruition.

Without exception, the Council wants to see HAMP funded, constructed, and put into operation. We are well aware of the fact that the current water supply in the Hopi First and Second Mesa Villages exceeds EPA's Clean Drinking Water standards for arsenic and want to move expeditiously to secure a clean water supply that remedies the adverse consequences of the current water supply on the health of our people.

As you know, HAMP is an expensive project and is beyond the economic means of the Hopi Tribe. Current estimates are that HAMP planning, design, engineering, and construction will total approximately \$20 million. Even with EPA grants and Indian Health Service (IHS) financial support, the unfunded balance of HAMP will be about \$14.4 million plus construction cost escalation of, probably, several million dollars, over a construction period of several years. We have been advised that preliminary "ability to pay" estimates based on supplying only the Hopi Villages indicate that a loan of only about \$1.5-\$1.8 million to cover the investment costs of HAMP could be amortized by the residents of the villages as part of their water supply costs. We have had intermittent communications with the Department of Agriculture's Rural Development Program (USDA-RD) staff, and it appears as though financing HAMP was likely to be well beyond the capacity of USDA-RD and the Tribe together because USDA-RD's limited grant funding.

At the same time, however, HAMP was designed to serve not only the Hopi Villages at First and Second Mesa, but also to meet the needs of the Bureau of Indian Affairs' Keams Canyon Water



Supply System and the needs of the Bureau of Indian Education's Hopi Junior-Senior High School and Second Mesa Day School. HAMP is designed to provide a substantially better water supply alternative than continuing to rely on the arsenic removal processes currently in use by those facilities. One of our early conclusions was that the financial and operational participation of the Bureau of Indian Affairs and the Bureau of Indian Education, which, together, would account for about 30% of the water supplied by HAMP and a commensurate allocation of HAMP development and operations costs, would be necessary to make HAMP financially viable. We did not believe the Hopi Tribe's resources would be sufficient to "carry future users' capacity," and, given the lack of commitment from the Interior Department, it was not clear that the Indian Affairs bureaus would ultimately participate in HAMP, despite support from their local management.

We had been discussing the arsenic issue, HAMP, and the need for financial support for HAMP from the Department of the Interior with senior Interior and Indian Affairs officials since at least the summer of 2011 without success, but it appears we have had a major breakthrough within the past several weeks. Following briefings for IHS, Indian Affairs, and USDA-RD senior officials on January 22, 2013, we were advised in a conference call on February 8<sup>th</sup> that Kevin Washburn, Interior's Assistant Secretary – Indian Affairs, has considered the issue, discussed it with the other federal agencies, and concluded that Indian Affairs will participate in HAMP. This is the turn of events we have been seeking. We are advised that Mr. Washburn's staff is currently examining the form of that participation, which may need to include amortization of a substantial loan from USDA-RD to an appropriate unit of the Hopi Tribe. Mr. Washburn and his staff are also aware that Indian Affairs' participation will need to include funding their share of HAMP as well as the cost of connecting their facilities to HAMP. We understand that there have been discussions among Mr. Washburn's staff, USDA-RD, and IHS staff at the Washington, DC, level to help determine the manner and timing of the commitment of Indian Affairs to HAMP, including the possible development of Memoranda of Agreement with the three Agencies. We are reasonably confident these discussions will lead to a successful conclusion.

Given this turn of events, the Hopi Tribal Council is in a position to state the following position and respond to your questions.

First, assuming full participation by Indian Affairs in HAMP and success in securing USDA-RD loans and grants, and with continued support from other agencies including IHS, we believe HAMP will be viable. The Hopi Tribe will contribute financially to help assure its success. We will be exploring our financing options contemporaneously with working with the federal agencies on their participation in and/or financial support for HAMP as appropriate for each agency. We expect construction of HAMP will take place in three phases as anticipated in the draft PER, with funding for completion of phase one secured before the end of this fiscal year and funding for the second and third phases in successive fiscal years. We believe this phased approach will be required to keep the project within the resources available to USDA-RD and the Tribe. We believe this approach also should meet USDA-RD criteria that each funded project phase deliver water to project customers.



Second, we will be examining the operation and maintenance costs of HAMP closely to determine how those costs, including amortization of USDA-RD loans, can be incorporated into fees for water service. As a general matter, the Tribe allocates funds to each village and some of the villages use a portion of their allocation to help or fully meet water delivery expenses to Hopi families. Our expectation is that the villages' shares of water service costs will be met by the villages and their residents but will take a close look at the costs and options. We request your assistance in that effort. We also are well aware of the fact that participation of the Indian Affairs bureaus will help spread fixed water service costs among more customers and, therefore, make water service fees more affordable for everyone. In that regard, a member of our team has asked your staff to take a close second look at the cost allocations for water service identified in the August 21, 2012, draft Hopi Water System Strategic Plan. The current draft assumes that less than 10% of HAMP revenue will come from the Indian Affairs' bureaus, while they will receive about 30% of the water from the system. The cost allocations for HAMP operations need to be based on the planned share of water to be delivered. Loan amortization calculations will need to take into account any loan requirements for connecting Indian Affairs facilities to HAMP as well as the likely differential between ability to pay in the Hopi villages and the share of village water service funded through USDA supplementation grants consistent with USDA-RD policy.

We are reviewing a first draft of a Hopi Tribe Utility Authority ordinance and the full Council expects to be considering it in March. Our current expectation is that the Council will create a utility authority that will wholesale water to the villages and Indian Affairs facilities. Each village will have the option to request the utility authority to also manage its water distribution system. Also, Hopi villages other than those at First and Second Mesa could have their water supply systems operated by the Hopi utility authority. The BIA could also request that the authority manage the Keams Canyon Water System. We expect the utility authority to be headed by a director and to operate under the guidance of a utility commission, which would oversee water distribution operations and establish water service rates. We hope to be in a position to start the recruitment process for the utility authority director in April. We do not visualize designating the Village Utility Maintenance Cooperative as the operating agency for HAMP.

Under the Hopi Tribe's constitution, Hopi villages are self-governing and have substantial independent authority. The Tribe and villages, however, understand that they are required to meet EPA water quality standards and we have a common goal of providing safe drinking water to our people. The Council believes that the only viable means of accomplishing this will be through HAMP. The villages will be required to cover their fair share of HAMP operation, maintenance, and administrative costs as well as the amortization cost associated with USDA-RD loans.

The Hopi Tribal Council requests that you proceed to complete the final draft of the HAMP Project Engineering Report (PER) and Strategic Plan based on the assumption that the Indian Affairs bureaus will connect to HAMP, fully share in HAMP development costs, and pay their share of water service fees. We recognize that we still need to finish the cultural report in order to complete the environmental assessment of HAMP and that the power supply source needs to be resolved. Lionel Puhuyesva, Director, Hopi Water Resources Department, and William



Bettenberg, Special Counsel, will contact you to identify what other information and decisions are needed to complete the PER and Environmental Assessment, to seek your continued assistance in the USDA-RD loan and grant review process, and to seek your assistance in helping the Tribe better understand what other steps it needs to take to make HAMP a reality. We will be back in contact with you to schedule a meeting with the Tribal Council.

Sincerely yours,

A handwritten signature in black ink, appearing to read "LeRoy N. Shingoitewa", is written over a horizontal line.

LeRoy N. Shingoitewa, Chairman